

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of )

Inquiry Concerning the Deployment of Advanced )  
Telecommunications Capability to All Americans )  
In a Reasonable and Timely Fashion, and Possible )  
Steps to Accelerate Such Deployment Pursuant to )  
Section 706 of the Telecommunications Act of )  
1996, as Amended by the Broadband Data )  
Improvement Act )

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GN Docket No. 11-121

**COMMENTS OF METROPCS COMMUNICATIONS, INC.**

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## TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY.....	1
II.	THE COMMISSION SHOULD REVISE ITS ARBITRARY BROADBAND SPEED THRESHOLD AND ACKNOWLEDGE THE INFLUENTIAL ROLE THAT WIRELESS TECHNOLOGY HAS PLAYED IN BROADBAND DEPLOYMENT .....	3
A.	Consumer Demand, Rather Than an Arbitrary Government-Mandated Broadband Threshold, Should be Recognized in the Assessment of Reasonable and Timely Broadband Deployment.....	5
B.	New and Improved Wireless Technologies Are Rapidly Increasing Deployment of Broadband Services.....	9
C.	Increased Competition by Wireless Providers Will Continue to Drive Broadband Deployment.....	12
III.	THE COMMISSION MUST ENSURE THAT BROADBAND DEPLOYMENT CONTINUES AND FLOURISHES BY ELIMINATING UNNECESSARY REGULATORY BARRIERS.....	14
IV.	THE COMMISSION MUST SECURE AND FAIRLY DISTRIBUTE ADDITIONAL SPECTRUM TO PROMOTE CONTINUED BROADBAND DEPLOYMENT .....	17
V.	CONCLUSION .....	20

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MetroPCS Communications, Inc. (“MetroPCS”),<sup>1</sup> by its attorneys, hereby respectfully submits its comments in response to the *Notice of Inquiry* (“*Notice*”), dated August 5, 2011, released by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceeding.<sup>2</sup> In support, the following is respectfully shown:

**I. INTRODUCTION AND SUMMARY**

In its *Notice*, the Commission again seeks comment on whether broadband services are being deployed to Americans in a reasonable and timely fashion, and what additional actions the Commission can take to accelerate broadband deployment for the purposes of its Eighth

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<sup>1</sup> For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

<sup>2</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Notice of Inquiry, GN Docket No. 11-121 (Aug. 5, 2011) ( the “*Notice*”).

Broadband Deployment Report (“*Eighth Report*”).<sup>3</sup> MetroPCS submits that the Commission may be asking the wrong question regarding broadband services and should instead focus on consumer demand, impediments to broadband adoption by consumers, and what steps it can take to accelerate consumer adoption of broadband services.

Mobile broadband service is a current driving force in broadband deployment. In order to maintain and further increase its deployment capabilities for the future, the Commission must acknowledge the impact this service plays in its assessment of broadband deployment for the *Eighth Report*. Through this recognition, the Commission should find that broadband services *are* being deployed in a reasonable and timely manner, with the driving force being this nation’s mobile wireless providers. The Commission can accomplish this via a revision of the arbitrary broadband speed threshold that it is currently using for its assessment of broadband deployment. The Commission must focus on those forces that will drive consumer choice, rather than government-mandated command and control regulations, to ensure that such broadband deployment continues. MetroPCS further proposes that the Commission eliminate unnecessary regulatory barriers that hinder broadband deployment, most notably the *Open Internet Order*. These regulations will impose additional burdens on wireless providers that will limit the amount of resources to be dedicated to broadband deployment, as well as shift the providers’ focus from providing innovative services to complying with unnecessary regulations. This will be particularly true with small carriers, as they may be subject to having to offer services in ways that do not reflect their particular resource constraints, such as spectrum. Finally, MetroPCS stresses the importance of securing and fairly distributing additional spectrum in order to promote continued broadband deployment. Without plentiful access to wireless spectrum,

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<sup>3</sup> Notice at ¶¶ 20, 30.

mobile providers will simply not be able to offer robust and advanced services to their customers, creating yet another barrier to broadband adoption.

## **II. THE COMMISSION SHOULD REVISE ITS ARBITRARY BROADBAND SPEED THRESHOLD AND ACKNOWLEDGE THE INFLUENTIAL ROLE THAT WIRELESS TECHNOLOGY HAS PLAYED IN BROADBAND DEPLOYMENT**

MetroPCS disagrees with the Commission's conclusion in the *Seventh Report* that broadband Internet access services are not being deployed in a reasonable and timely manner. This determination is solely a function of the Commission's decision to set the criteria for "broadband" at an arbitrarily high level and at the same threshold speed for fixed and mobile services. Indeed, it was the Commission's prior determination to set the speed for broadband at "download speeds of at least 4 Mbps and upload speeds of at least 1 Mbps" that led to the Commission's conclusion that broadband is not being deployed in a timely fashion.<sup>4</sup> While these speeds may have some applicability for fixed broadband services, they ignore the very important role that mobile broadband has and will continue to have on broadband deployment. Such an arbitrary determination categorically excludes the functionality and utility of mobile broadband, as well as ignores consumer choice and demand for broadband services.

The Commission states that "as many as 26 million Americans lie in areas unserved by broadband."<sup>5</sup> These findings however are colored by the arbitrary speed threshold that the Commission used, which measures the rate of deployment by determining whether every American is being served by broadband at a certain speed. However this ignores the fact that

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<sup>4</sup> Notice at ¶ 6; See also *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Sixth Broadband Deployment Report, GN Docket Nos. 09-137, 09-51, ¶ 5 (2010).

<sup>5</sup> Notice at ¶ 2 (citing *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, 8009, ¶ 1 (2011) ("*Seventh Report*").

many of these “unserved” Americans may already have access to other forms of broadband connectivity, for example through use of a mobile wireless device, and may have decided that such connectivity is sufficient for their use and planned uses.<sup>6</sup> Recent data released by the US Telecom Association, the National Cable & Telecommunications Association (“NCTA”) and CTIA- The Wireless Association, (“*NCTA data*”) illustrates that there are more than 80 million fixed broadband connections in the country and there are more than 71.2 million mobile broadband users.<sup>7</sup> The market for these services is extremely competitive, and as a result, innovation is peaking with wireless carriers spending billions of dollars in recent years to develop robust broadband technologies. With these new technologies comes new services, and wireless carriers continue to deploy new (and upgrade existing) networks for the next generation of services, such as 4G LTE and WiMax broadband. These services will not only expand coverage to more Americans, but will also provide greater speeds and more advanced broadband services to American consumers.<sup>8</sup> Such advances cannot be ignored in any report claiming to measure broadband deployment.

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<sup>6</sup> “Smartphones keep getting more powerful and operating systems keep getting smarter. In the fourth quarter of 2010, smartphones outsold PCs worldwide- 101 million to 92 million.” Julius Genachowski, Chairman, Fed. Comm’n Comm’n, Remarks as Prepared for Delivery at the CTIA Wireless Convention (Mar. 22, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-305309A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305309A1.doc) (“*Chairman Genachowski CTIA Speech*”).

<sup>7</sup> Media Release, NCTA, Capital Expenditure Figures From Leading Trade Groups Show Providers Have Invested More Than \$250 Billion Since 2008 (May 19, 2011), <http://www.ncta.com/ReleaseType/MediaRelease/Capital-Expenditure-Figures-Show-Broadband-Providers-Have-Invested-More-Than-250-Billion-Since-2008.aspx> (“*NCTA Media Release*”).

<sup>8</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, including Commercial Mobile Services*, Fifteenth Report, WT Docket No. 10-133, ¶108 (2011) (“*Fifteenth Report*”).

**A. Consumer Demand, Rather Than an Arbitrary Government-Mandated Broadband Threshold, Should be Recognized in the Assessment of Reasonable and Timely Broadband Deployment**

Competition may drive broadband deployment through innovation, but competition itself is driven by consumers. Consumer demand plays a critical role in broadband deployment and should be a significant consideration when the Commission makes its assessment in the *Eighth Report*. The “need for speed,” as stressed by the Commission, is an improper measurement threshold for broadband deployment when viewed in the context of what consumers want or need. Indeed, the Commission’s decision to set an arbitrarily high threshold for broadband speed both predetermines the outcome of its report and ignores the explosion of mobile broadband services. Rather than continuing with its current broadband threshold, the Commission should remove its near-singular focus on broadband speed, and instead look to consumer demand for an accurate picture of broadband deployment. Indeed, consumers have indicated that they are willing to accept slower speeds for increased mobility.<sup>9</sup> This fact should not be viewed as an indication that broadband is not being timely deployed. Rather, recognition should also be given to the fact that if a consumer is satisfied with what they have, then that should be adequate for deployment purposes and should count as meeting consumer needs.<sup>10</sup>

Now, more than ever, consumers have the ability to get the exact services they want, when they want them, and where they want them. Consumer focus often is on the information they can receive, and not necessarily the speed at which they receive it. For example, not all consumers necessarily want or need video capability on their smartphone, and therefore speed is

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<sup>9</sup> As CTIA has asserted, “[c]onsumers often want mobility, and are in many cases willing to trade some speed for the freedom of a ubiquitous connection – while still able to stream video or audio, quickly download large files, browse the Internet, and use advanced gaming and social networking applications, among other features.” Comments of CTIA- The Wireless Association in GN Docket No. 10-159, at 11 (filed Sept. 7, 2010).

<sup>10</sup> Of course, consumer demand is not static and MetroPCS does not suggest that the Commission should not be able to change what is acceptable over time. However, the key focus must be on what consumers want, rather than what regulators think they need.

not as important to them because their focus is on obtaining information services, such as webpages. If a consumer chooses to have a rate plan with a lower speed, it may be that they do not have a need for greater speed. Indeed, as the Commission knows, MetroPCS, a carrier focused intently on consumer needs, has developed service plans that provide consumers with those choices. For example, MetroPCS offers a 4G network that enables its consumers to watch videos and stream other forms of multimedia at fast next generation speeds. MetroPCS also offers a 1xRTT network that provides consumers with data speeds under 200 KB that still enables consumers to access much of the Internet as well as use many smartphone functions. This service, despite the availability of higher speeds at comparable rate plans, remains very popular with consumers. Just as speed might be an important factor for one consumer, the particular type of handset offered, or the fact that such access is mobile, rather than fixed, might be valued more by another consumer. If the consumer gets what they want, and is therefore satisfied with their decision, then deployment should be deemed adequate for assessment purposes – even if it doesn't happen to meet the Commission's arbitrarily determined threshold speed.

To be viewed in another context, there are a variety of manufacturers in this country that a consumer may choose from when purchasing a new vehicle. Usually, the consumer goes into the dealership with some idea of what they are looking to purchase based on their own personal taste and needs. The consumer may be attracted to a manufacturer due to the models offered, the speed that may be obtained, additional amenities available, or even because they receive a discount on the price. For example, a consumer may want to purchase a vehicle that does not have the capacity to exceed the speed limit on the highway by a significant amount, like a Smart Car. While not the fastest car on the road, the purchase still satisfies the consumer because they



do not intend to go on the highway often. The consumer is happy with their purchase because they use it to commute to and from work everyday, go grocery shopping, and further travel around the city in which they reside- all the initial reasons that drove the consumer make their purchase in the first place. It all comes down to consumer preference; in the end the consumer will be satisfied with their purchase because this is what they wanted. Just because the consumer's idea of a "perfect" vehicle, or in this case, the "perfect" broadband service, does not fit squarely into the Commission's vision, that should not discount it from contributing to the assessment of timely and reasonable deployment. Further, the Commission should not arbitrarily decide that all consumers would need a race car when the smart car is sufficient for their needs. The focus should be on what consumers want.

In addition, the Commission must also acknowledge the fact that just as the technology world is changing – so are people's lives. In some cases, offices have been replaced by coffee shops, the "9 to 5" has morphed into the "24/7" and individuals' business cards have at least three different forms of contact information that all usually lead to one device attached to his or her hip. Today's consumer is no longer constrained by wires, and they do not need to be sitting at home to receive a phone call, or be present in an office to conduct a business meeting- consumers are mobile and their lives are mobile. This further supports the view that speed is not the only consideration for the consumer and should not be the only consideration for the Commission.

This desire for mobility is also revealed in the explosion of Wi-Fi usage. Indeed, consumer preferences have resulted in the significant emergence of hotspots or areas with Wi-Fi access. What used to be a paid-for service at a handful of coffee shops now often exists for free

at many coffee shops, restaurants, shopping malls, and most recently, public parks.<sup>11</sup> Indeed, if a consumer is content to use broadband services via Wi-Fi hotspots, the Commission should include such usage in its determination of broadband deployment.

Consumer demand also highlights an additional flaw in the FCC's assessment; some Americans simply do not want broadband service. Some individuals believe that the Internet is not relevant or useful for their lives, and some other individuals do not make broadband connectivity a priority when there are other necessities they must focus on obtaining. Indeed, in these difficult economic times, tough choices have to be made when it comes to what is necessary. For some people, broadband Internet access does not meet that threshold. Therefore, whether or not *every* American is being served at a certain speed by broadband should not be the proper consideration for the threshold, as this service is and should remain, a choice for the consumer. The Commission's focus fails to recognize that its measurement standards essentially force service onto those who do not wish to have access to a broadband network or to spend money on it when they have other priorities. Consumer demand indicates that the approach the FCC has taken to determine broadband deployment in its *Seventh Report* does not encompass the proper focus to reach the ultimate goal - which should be to ensure that broadband connectivity is available to all Americans to use as they, and if they, wish.

Lastly, digital literacy is a factor that will almost always be present due to the ever-changing nature of this technology. MetroPCS applauds the initiative created by the Department of Commerce, NTIA and partnering agencies to assist in helping Americans build their online

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<sup>11</sup> Within a year after introducing a Wi-Fi hotspot project in New York City's Time Square, AT&T launched a Wi-Fi service in twenty New York City parks that was free for all users regardless of their wireless carrier. Press Release, New York City Office of the Mayor, Mayor Bloomberg and AT&T Chairman and CEO Randall Stephenson Launch Free Wi-Fi Service in 20 New York City Parks (June 9, 2011), [http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor\\_press\\_release&catID=1194&doc\\_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2011a%2Fpr202-11.html&cc=unused1978&rc=1194&ndi=1](http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2011a%2Fpr202-11.html&cc=unused1978&rc=1194&ndi=1)).

skills.<sup>12</sup> However, this is only the beginning, and broadband providers should also step up and assist with this overall effort. This is not only the responsibility of providers, but also requires an effort made on the part of the consumer. The consumer must want to learn how to use the Internet, and the Commission should note that digital literacy may be tied to lack of interest, and once more, associated with consumer preference.

**B. New and Improved Wireless Technologies Are Rapidly Increasing Deployment of Broadband Services**

The Commission's current broadband threshold also completely ignores the fact that mobile wireless broadband services increasingly are becoming the mechanism by which consumers are assessing the Internet. Broadband connectivity in America is continuing on its path of rapid expansion due to new technologies constantly entering and expanding the market. When assessing broadband deployment, however, the Commission incorrectly has focused on the current amount of subscriptions based on an arbitrary speed determination, and not the actual state of deployment, as it should be doing. The *Eighth Report's* assessment of broadband deployment must acknowledge the billions of dollars that wireless companies are investing on new technologies, such as 4G and other next generation services, to advance the deployment of broadband services. These technological advances have further evolved consumer preferences, and allowed the wireless industry to seriously compete with wireline providers.<sup>13</sup>

The Commission recognizes the importance of mobility in its Fifteenth Report of Competitive Market Conditions with Respect to Mobile Wireless ("*Fifteenth Report*") concluding that "[m]obile wireless Internet access service could provide an attractive alternative to wireline offerings for consumers who are willing to trade off speed for mobility, and also

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<sup>12</sup> See generally [www.DigitalLiteracy.gov](http://www.DigitalLiteracy.gov).

<sup>13</sup> *Fifteenth Report* at ¶ 367.

consumers who are relatively indifferent with regard to the attributes, performance, and pricing of mobile and fixed platforms.”<sup>14</sup> As Chairman Genachowski has noted, “[t]he mobile sector is critical to U.S. innovation and economic leadership in the 21<sup>st</sup> century.”<sup>15</sup> In fact, he further stated that with respect to mobile broadband “no sector now holds more promise for opportunity, for economic growth, for improvements to our quality of life, and for our global competitiveness.”<sup>16</sup> There is an explosion in demand for mobile services, and failing to recognize mobile broadband access in the assessment of deployment for the *Eighth Report* belies such statements. Chairman Genachowski recognizes that Americans are “[a]lways challenging [themselves]; always adapting; always looking to the next horizon. . . we must apply that same spirit to our broadband challenges.”<sup>17</sup> The time has come for the FCC to adapt its assessment of broadband by looking to the next horizon: mobile broadband.

Despite this rhetoric, the Commission’s previous reports have failed to take into account the promise of mobile broadband. Failure to acknowledge the emergence of mobility is one reason the Commission’s data finds home broadband adoption to be low. Mobile wireless broadband is not only a driver of present broadband deployment, but also will be the leader of deployment in the future. 4G networks are predicted to “soon enable a tidal wave of new mobile innovations, from entertainment, to two-way video, to telemedicine and more.”<sup>18</sup> With the introduction of tablets and advanced smartphones, PC’s may soon become obsolete.<sup>19</sup> For example, in September 2010, MetroPCS became the first mobile wireless provider to launch 4G

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<sup>14</sup> *Id.*

<sup>15</sup> *Chairman Genachowski CTIA Speech.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> “Smartphones keep getting more powerful and operating systems keep getting smarter. In the fourth quarter of 2010, smartphones outsold PCs worldwide- 101 million to 92 million.” *Id.*

LTE services in the United States. At the same time, MetroPCS also released the world's first commercially available dual mode 4G LTE-enabled CDMA handset, the Samsung Craft. Since the initial launch, MetroPCS has deployed LTE services in all MetroPCS metropolitan areas, increasing speeds for its customers as well as overall capacity for the network.<sup>20</sup> This new technology allows the consumer to “do more with unlimited talk, text and 4G LTE Web browsing as well as data access for music and video downloads, including live streaming video.”<sup>21</sup> Other wireless providers soon began to follow suit, and plans for 4G deployment were placed into action, with each carrier developing its own path for offering faster network speeds and greater capacity. This new technology is a force that drives innovation and promotes competition, greatly contributing to the evolving broadband ecosystem as it “deliver[s] a high-speed Internet experience comparable to what many enjoy on desktops.”<sup>22</sup> According to the Commission's recent report on wireless service, approximately 98.5 percent of the U.S. population is covered by one or more mobile providers using advanced 3G or 4G networks, while 92 percent of the population is covered by at least two providers using 3G or 4G technology, and 82 percent of the population is covered by three or more advanced network providers.<sup>23</sup> These numbers support the conclusion that wireless broadband deployment is a critical aspect of broadband deployment and therefore should not be ignored by the Commission in measuring broadband reasonableness and timeliness for purposes of the *Eighth Report*.

Moreover, while wireless service providers may compete with fixed service providers when it comes to accessing information over the Internet, fixed providers are unable to compete

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<sup>20</sup> Press Release, MetroPCS, MetroPCS Launches 4G LTE Service in the Tampa Metropolitan Area (Apr. 1, 2011), <http://www.metropcs.com/presscenter/newsreleasedetails.aspx?id=17>.

<sup>21</sup> Press Release, MetroPCS, MetroPCS Launches 4G LTE Service in the Florida Keys (July 1, 2011), <http://www.metropcs.com/presscenter/newsreleasedetails.aspx?id=25>.

<sup>22</sup> *Chairman Genachowski CTIA Speech*.

<sup>23</sup> *Fifteenth Report* at ¶ 46.

with the flexibility and mobility provided by mobile wireless broadband providers. This further demonstrates that the Commission cannot ignore mobile broadband deployment in the *Eighth Report*.<sup>24</sup>

**C. Increased Competition by Wireless Providers Will Continue to Drive Broadband Deployment**

Competition is necessary for continued broadband deployment as it stimulates innovation and creates more affordable options for consumers. Not only are wireless carriers competing with one another, but these carriers are also competing with fixed wireline service providers - creating a highly competitive marketplace for broadband services. This competition between technologies and across technology platforms benefits consumers by ensuring that they have a variety of choices, both in terms of prices but also capabilities, when it comes to selecting a broadband provider.

The Commission should acknowledge that the timeliness of broadband deployment may be effectively measured by the level of competition in that market. The wireless industry itself is currently competitive with approximately 97.2 percent of the American population being covered by at least three mobile voice providers, and 94.3 percent of the population being covered by at least four mobile voice providers.<sup>25</sup> Since wireless service can act as a substitute for wireline broadband services, consumers also have the choice of at least one wireline telephone provider, one cable provider, and potentially a satellite broadband service provider. This ensures that

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<sup>24</sup> That is not to say that fixed wireline services should now be completely discounted when assessing broadband deployment. Just as wireless providers are investing billions of dollars into this industry, wireline providers also continue to increase investment in broadband services. *NCTA Data* demonstrates that since 2008, wireless and wireline broadband providers have jointly invested more than \$250 billion towards the deployment effort, which amounts to approximately \$2,000 per American household. It is projected that 2011 investment alone will be at least \$60 billion. When broken out by sector, wireline investment was \$89 billion, wireless investment was \$71 billion and cable investment amounted to \$40 billion. As investment increases, innovation flourishes and the competition gets tougher. These three ingredients are essential forces in driving broadband deployment. *NCTA Media Release*.

<sup>25</sup> *Fifteenth Report* at ¶ 44. This competitiveness must be nurtured by the Commission, as noted below, and should not be diminished by unconditioned consolidation.

consumers have significant choice. If the consumer is not satisfied with his network service, he may easily go to another provider or technology, a fact that wireless carriers are aware of and therefore they continue to offer cutting-edge technology and devices to survive in this market. Further, each network provider offers to consumers different choices in terms of services, speeds, and prices. Indeed, some providers, such as MetroPCS and Sprint, offer unlimited data services for a fixed price, while others offer data capped services. Consumers clearly benefit from this high level of competition as it produces “increased product variety and differentiation of service, more technological competition and tougher price competition.”<sup>26</sup>

One of the barriers that the Commission cites as hindering broadband adoption is affordability.<sup>27</sup> In the *Seventh Report*, the FCC found that “[o]n average, unserved Americans live in areas that are more rural and less densely populated, and in which larger proportions of residents are lower-income. . . .”<sup>28</sup> Further competition in this market will ensure that prices continue to be competitive in this market, and therefore, more Americans will be able to afford broadband services. However, the Commission must take action to ensure that such competition will continue. With further consolidation in the wireless industry looming on the horizon (i.e., the AT&T/T-Mobile merger) the Commission must take action to ensure that the competitiveness of the wireless industry remains and that such benefits of competition are passed on to consumers. Thus, the Commission must adopt MetroPCS’ proposed conditions if it decides to approve such merger.<sup>29</sup> Also, as noted in further detail below, the Commission must take actions to promote broadband deployment, rather than take actions to hinder it, such as avoiding

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<sup>26</sup> *Fifteenth Report* at ¶ 107.

<sup>27</sup> *Notice* at ¶ 2.

<sup>28</sup> *Seventh Report* at ¶ 51.

<sup>29</sup> See Petition of MetroPCS Communications, Inc. and NTELOS Inc. to Condition Consent, or Deny Application in WT Docket No. 11-65 (May 31, 2011).

regulation that deters, rather than promotes deployment, and to make additional spectrum available to ensure all wireless carriers can continue to serve the needs of all consumers.

### **III. THE COMMISSION MUST ENSURE THAT BROADBAND DEPLOYMENT CONTINUES AND FLOURISHES BY ELIMINATING UNNECESSARY REGULATORY BARRIERS**

MetroPCS recognizes that the Commission has taken steps to promote broadband deployment, and applauds the Commission's recent adoption of regulations regarding data roaming and the process for obtaining cell sites. Roaming agreements are especially vital to ensure that small, rural, and mid-tier carriers such as MetroPCS are able to effectively compete with their larger rivals in the wireless marketplace. However, this is just one step of many to ensure continued broadband deployment. In light of the approaching potential merger of two of the nation's largest wireless carriers, roaming agreements on just and reasonable terms are now, more than ever, essential to promoting competition. The proposed merger of AT&T and T-Mobile will further consolidate the wireless market and therefore reduce consumer choice and competition, which will hinder broadband deployment. If the Commission decides to approve such merger, it must condition the merger to ensure that consumers continue to receive the benefits of wireless innovation and deployment. Moreover, Commission regulations and policies must be implemented to ensure that the mobile broadband market continues to stay highly competitive by providing an equal playing field for both small and large carriers. Lastly, the Commission must refrain from regulations that hinder broadband deployment, such as the recently adopted *Open Internet Order*.<sup>30</sup>

The *Open Internet Order* does not promote broadband adoption, but in fact, will limit the amount of resources that all broadband providers will have to focus on broadband deployment.

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<sup>30</sup> *Preserving the Open Internet, Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905 (2010) ("*Open Internet Order*").



Such regulations will force carriers, particularly non-dominant carriers, to focus on complying with unnecessary regulations instead of providing innovative services to consumers. Indeed, MetroPCS has repeatedly argued that the *Open Internet Order* will deter small carriers from additional deployment if, as a result of offering broadband services, they are subject to having to offer services in ways that do not reflect their particular resource constraints, such as spectrum, or their need to focus their offerings to allow them to compete with larger carriers who have greater resources. The Commission needs to focus on how to remove regulatory barriers for smaller carriers. This is not news to wireless carriers, or even the FCC. Indeed, last year the Chairman stated that “[w]ireless providers also face red tape and needless barriers, which slow deployment and increase the costs of investment.”<sup>31</sup> And yet, these barriers continue to be adopted or contemplated by the Commission.<sup>32</sup>

Moreover, with the *Open Internet Order* yet to take effect, the regulatory atmosphere surrounding broadband Internet access service providers is uncertain to say the least. The possibility of a future market where innovative, universally beneficial business models are prohibited will deter broadband investment by providers. It goes without saying that this has the potential to harm the American public by preventing deployment of broadband, and the Commission must acknowledge the particularly detrimental impact that this will have on wireless broadband access providers.

The various forms of competition that exist within the broadband market dictate that these regulations would be harmful to both wireless and wireline providers. However, wireless providers will be particularly impacted by network neutrality regulations. The finite capacities

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<sup>31</sup> *Chairman Genachowski CTIA Speech.*

<sup>32</sup> For example, the FCC is currently considering other regulatory burdens for providers such as additional outage reporting requirements for broadband and the “need for speed” consumer disclosures.

of the wireless systems, the limited capabilities of handsets, the inability of wireless carriers to acquire and deploy additional spectrum capacity quickly when it is needed, and the presence of firms with vastly different resources available to them are clearly distinguishing factors.<sup>33</sup>

Wireless is also unique because it operates on a shared system using a scarce, finite spectrum resource. The advanced 4G technology that currently is at the forefront of wireless mobile broadband deployment was created and has thrived under a regime that is competition-friendly and lightly regulated. MetroPCS recognizes that part of its 4G LTE success has been due to MetroPCS' freedom to design and maintain control over its network and the design of its services. If the Commission proceeds with its proposed regulations, then carriers' ability to innovate and provide advanced services may be diminished due to the loss of the carriers' ability to design their services to fit the capabilities of their systems and the demands of the customers targeted by these carriers. These regulations will hinder investment and definitely have a negative effect on the ability of carriers to deploy broadband. If the Commission pulls the rug out from under wireless providers, such providers will likely have no choice but to return to the metered-use model<sup>34</sup> – one that consumers have tested and rejected in favor of unlimited plans and that will severely limit the current rate of wireless broadband deployment as primary or alternative avenue for consumers to access the Internet.

Just as the Commission took a “hands-off” approach during the development of the wired Internet, it should do so for the wireless Internet now. The Commission should not do anything to stifle the investment and innovation that currently is flourishing in the wireless marketplace.

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<sup>33</sup> Wireline and cable broadband services are generally different from wireless broadband services since in many instances the carrier is the only one providing service using that particular technology and generally has significant resources available to it. In the wireless industry, the top 2 carriers have the lion's share of the revenues and consumers in the industry. The other two nationwide carriers are considerably smaller, with the third-tier and rural carriers being even smaller.

<sup>34</sup> Caroline Gabriel, “AT&T Sounds Deathknell for Unlimited Mobile Data,” Rethink Wireless, Dec. 10, 2009, available at [http://www.rethink-wireless.com/article.asp?article\\_id=2239](http://www.rethink-wireless.com/article.asp?article_id=2239).

Adopting any regulations that increase the burdens on wireless providers will limit investment and have the effect of hindering broadband deployment – the exact opposite of what the Commission is trying to do.<sup>35</sup>

#### **IV. THE COMMISSION MUST SECURE AND FAIRLY DISTRIBUTE ADDITIONAL SPECTRUM TO PROMOTE CONTINUED BROADBAND DEPLOYMENT**

The Commission acknowledges that “mobile broadband is being adopted faster than any computing platform in history, and could surpass all prior platforms in their potential to drive economic growth and opportunity.”<sup>36</sup> Mobile service is an important force behind broadband deployment, but more spectrum must be provided in order to allow the mobile industry to fulfill its future potential. As the Chairman has stated, “spectrum is the oxygen that allows all of the[] mobile innovations to breathe.”<sup>37</sup> The *Seventh Report* notes, and MetroPCS recognizes, that the Commission has freed up spectrum for unlicensed use and “Super-Wi-Fi,” as well as promoting repurposing efforts and most recently, inquiring into potential use for the 2 GHz band.<sup>38</sup> MetroPCS applauds the Commission’s actions as they will prove helpful in the deployment of additional wireless broadband. However, this is not nearly enough. Wireless spectrum is the lifeblood of the mobile wireless services industry – without plentiful, regular, and meaningful access to wireless spectrum, providers simply are not able to offer robust services to their customers.<sup>39</sup> The Commission also has recognized the important role of wireless spectrum,

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<sup>35</sup> In order to increase competition in the industry, the Commission may also want to consider whether the time has come to adopt a dominant/non-dominant carrier regulatory regime for the wireless industry. Given the current industry structure, along with the disparity in resources and spectrum available to the largest carriers as compared to the smallest carriers, having more stringent regulatory requirements for the largest wireless carriers may promote competition and level the playing field between the largest and smaller carriers.

<sup>36</sup> *Chairman Genachowski CTIA Speech*.

<sup>37</sup> *Id.*

<sup>38</sup> *Seventh Report* at ¶ 11.

<sup>39</sup> The Commission itself has noted this basic premise, finding that “[a]ccess to spectrum is a precondition to the provision of mobile wireless service.” *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, including*

finding that “[e]nsuring that sufficient spectrum is available for incumbent licensees, as well as for entities that need spectrum to enter the market, is critical for promoting competition, investment, and innovation.”<sup>40</sup> Such additional spectrum would increase the ability of wireless broadband providers to conduct additional broadband deployment. However, the telecommunications industry is currently resting on the brink of a “spectrum crunch” where the “amount of mobile data demanded by American consumers is likely to exceed the capacity of wireless networks in the near-term.”<sup>41</sup> The Commission must take immediate action to secure and auction additional spectrum as soon as possible in order to allow mobile wireless broadband providers to continue to innovate and extend their deployment of broadband resources.<sup>42</sup>

This lack of spectrum may lead (and already is leading) to further consolidation in the wireless industry. Such consolidation, if not properly conditioned, will ultimately hinder competition and slow broadband adoption deployment. Unless additional spectrum is made available, consumers will be the ones who find themselves affected by the spectrum crunch. Accordingly, unless the Commission allocates sufficient spectrum to enable all competitors to meet their needs (and does so in a manner that allows each carrier to obtain its fair share), further consolidation is inevitable.

In order to free up badly-needed wireless spectrum, the Commission should immediately allocate for commercial use all of the paired spectrum that it is currently able to allocate –

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*Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, 11563, ¶ 251 (2011) (“*Fourteenth Report*”). Also, because spectrum is needed over time, the Commission must be careful to ensure the regular release of additional wireless spectrum. Auctioning all spectrum at the same time will limit the ability of new entrants to gain access to spectrum on an ongoing basis.

<sup>40</sup> *Fourteenth Report* at ¶ 251.

<sup>41</sup> *Fifteenth Report* at ¶ 267. For example, smartphones use 24 times as much spectrum capacity as a traditional cellphone does, while tablets use about 120 times more. *Chairman Genachowski CTIA Speech*.

<sup>42</sup> Other aspects need to be taken into account once the spectrum is secured, such as reasonable auction rules and regulations to ensure that there is equal opportunity for valid participation from large and small carriers alike.

spectrum that includes the AWS-2 and 700 MHz D Block. The Commission should also pair the AWS-3 Band with spectrum in the 1755-1780 MHz Band, or, if 1755-1780 MHz is not available, the 1675-1710 MHz Band.<sup>43</sup> It should also explore the options recently presented by Ericsson regarding a potential AWS-4 band.<sup>44</sup> Additionally, the Commission should continue to pursue all avenues to reach its stated goal of 500 MHz of additional spectrum over the next decade, and 300 MHz of additional spectrum over the next five years.<sup>45</sup> This should include an incentive auction to repurpose DTV spectrum. The Commission should also undertake a comprehensive review of all commercial spectrum to assess whether current uses may be more efficiently provided over other services. For example, the Commission should consider whether LTE video can substitute and replace the hundreds of MHz dedicated to Broadcast Auxiliary Service or other video services. Only a comprehensive review will allow the Commission to understand what additional spectrum truly may be made available. The inquiry should go beyond who is merely using/not using spectrum to whether the particular spectrum at issue may be replaced by another technology which makes far more efficient use of spectrum.

The release of additional spectrum must also continue to foster, and not hinder, the competitive aspect of the wireless industry by encouraging new entrants as well as small and rural carriers to participate in spectrum auctions. Auctions should be structured to allow the rural, small and mid-tier carriers with non-dominant market positions to effectively compete for spectrum with the large carriers with the dominant market positions.<sup>46</sup> It is time for the Commission to allow all carriers an equal and fair opportunity to obtain spectrum.

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<sup>43</sup> Comments of MetroPCS Communications, Inc., in ET Docket No. 10-123, 3 – 8 (filed June 28, 2010).

<sup>44</sup> Comments of Ericsson in ET Docket No. 10-142, WT Docket Nos. 04-256, 07-195, at 4 – 5 (filed Jul. 8, 2011).

<sup>45</sup> FCC, CONNECTING AMERICA: A NATIONAL BROADBAND PLAN FOR OUR FUTURE, xii (2010).

<sup>46</sup> MetroPCS believes economic areas (“EAs”) would be ideal, but cellular market areas (“CMAs”) or even the disfavored basic trading areas (“BTAs”) would encourage competitive entry. Further, any auction rules must incent

## V. CONCLUSION

Wireless broadband technology continues to advance each day. New services such as 4G and other next-generation broadband services are being deployed to create networks with faster speeds and more capacity. MetroPCS requests that the Commission acknowledge the important role that wireless service providers play in contributing to reasonable and timely deployment when assessing the state of the industry in its *Eighth Report*. The Commission should alter its arbitrary speed threshold for broadband and focus instead on what consumers want. As demonstrated above, mobility is important to the American public, as many consumers value the freedom that their mobile lifestyle provides over the speed that their service maintains, and it is only appropriate for the Commission to value this preference and find that broadband deployment is reasonably and timely.

In addition, MetroPCS urges the Commission to preserve the competitive nature of the telecommunications industry by eliminating regulatory barriers and promoting fair and reasonable standards for market consolidations. MetroPCS further requests that the Commission recognize the adverse affect that unnecessary regulations, such as network neutrality requirements, may have on the wireless industry and that a “one-size-fits-all” regulatory approach is both unnecessary and counterproductive. Mobile broadband service is not only prevalent in the present, but is likely going to be the leader of future broadband deployment and the Commission properly recognizes that additional spectrum must be secured to allow broadband to continue being deployed. However, MetroPCS urges the Commission to further recognize the drastic impact that unfair spectrum auctions may have on the industry as a whole,

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new entrants and small, rural and mid-tier carriers to compete on an equal footing. Finally, the Commission must refrain from imposing auction rules – such as combinational bidding – which clearly favor large entrenched bidders to the detriment of the competitive carriers that so badly need additional spectrum to deploy services to currently-unserved and –underserved areas.

and asks that rules and regulations are created to promote an auction environment that encourages new entrants and small, rural and mid-tier carriers to compete against the large and dominant carriers.

Respectfully submitted,

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